IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

Ins.APP.No. 12 of 2004()

IC.39/2002 of ESI COURT, PALAKKAD
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: APPELLANT/APPLICANT

M/S. A.T.S. RESIDENCY, YAKKARA BRANCH ROAD, NEAR D.P.OFFICE, PALAKKAD, REPRESENTED BY IT;S PROPRIETRIX N.P.SHEELA.

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS: OPPOSITE PARTY

REGIONAL DIRECTOR, E.S.I. CORPORATION, PANCHADEEP BHAVAN, SWARAJ ROUND NORTH, THRISSUR

BY ADV. SRI.P.SANKARANKUTTY NAIR

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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INS. APPEAL NO. 12 OF 2004

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Dated this the 9th day of April, 2007

J U D G M E N T

The applicant in an application filed under Section 75 of the Employees' State Insurance Act is the appellant. On 7.4.1998 two Inspectors of the respondent Corporation conducted a joint inspection in the establishment run by the appellant. They noted that 12 persons are employed in the establishment. It was a hotel and restaurant. As per the report, there were two Cooks, one assistant Cook, a Cashier-cum-Bill Clerk, two Waiters, two Cleaners, one Receptionist, one Manager, one Accountant and a Security staff. Notice was issued to the appellant. Appellant did not produce any document. Subsequently, another Inspector conducted another inspection on 30.10.2001 and prepared Exhibit B4 report, which is marked as Exhibit A1 also. Relying on the reports submitted by the Inspectors, the Corporation took a view that appellant's establishment is one using power and it had engaged more than 10 employees. Accordingly, it was held that the establishment is

one covered by the provisions of the Act. Challenging that order passed under Section 45A of the Act, appellant filed I.C.No.39 of 2006 before the Insurance Court, Palakkad.

2. The Insurance Court verified the documents and found that the appellant was employing more than 10 persons and it was an establishment using power and hence it is covered by the provisions of the Act.

3. Learned counsel for the appellant relying on Exhibit B4 report had argued that when the Inspector conducted inspection on 30.10.2001 there were only six employees.

4. I have perused Exhibit B4 report. The report shows that the Inspector asked the Manager to produce certain records and he produced one Service Register only which contained the names of six persons alone. It is very pertinent to note that in the earlier report, the Inspectors had written the names of the employees working there and questioned them. But the subsequent inspection report is silent as to whether he conducted any verification or not. It was cleverly stated that the record shows that there were only six persons and further inspection will be conducted on 30.11.2001. No reliance can be

placed on Exhibit B4 to hold that the appellant had engaged only less than 10 persons. Appellant has not produced the Wage Register, Muster Roll, Cash Book Ledger, etc. for the period from 4/98 to 7/99 either before the Inspectors, or before the Corporation or before the Insurance Court. No explanation was also offered for the non-production. Respondent produced a communication in which it was admitted by the appellant that documents will be produced. Considering the entire facts and circumstances of the case, I do not think any purpose will be served by remanding the case for adducing fresh evidence. The finding of the Insurance Court that the appellant had engaged more than 10 persons and the establishment is using power is a finding of fact based on good evidence and the same does not call for any interference. The appeal is only to be dismissed.

In the result, the appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

9TH APRIL, 2007